

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

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IN THE MATTER OF COMPLAINT OF
WILMINGTON TUG, INC. AS OWNER OF
“LINDSEY,” A 70-FOOT 1989 TOWING VESSEL,
FOR EXONERATION FROM OR LIMITATION
OF LIABILITY
-----X

CIVIL ACTION
IN ADMIRALTY

No.

**COMPLAINT FOR EXONERATION
FROM OR LIMITATION OF LIABILITY**

Plaintiff, Wilmington Tug, Inc. (hereinafter “Petitioner”) as owner of the “LINDSEY,” a certain 70-foot 1989 towing vessel built by Gladding-Hearn Shipbuilding (hereinafter “the Vessel”), by and through its attorneys, Palmer Biezup & Henderson LLP, hereby petitions for exoneration from or limitation of liability pursuant to 46 U.S.C. app. §§ 183-189, and in support thereof avers upon information and belief as follows:

1. This is an admiralty and maritime claim within the meaning of Rule 9(h) and Rule F of the Supplemental Rules for Certain Admiralty and Maritime Claims of the Federal Rules of Civil Procedure.

2. Petitioner Wilmington Tug, Inc. is a corporation organized under and existing pursuant to the laws of the State of Delaware with an office and place of business at 11 Gist Road, Wilmington, 19801.

3. The Vessel is a 70-foot 1989 motor towing vessel built by Gladding-Hearn Shipbuilding.

4. At all times material hereto, Petitioner was the owner of the Vessel and a party entitled to petition for exoneration from or limitation of liability within the meaning of the Revised Statutes of the United States.

5. On or about October 30, 2003, while upon the navigable waters of the United States, in or near the Delaware River, the Vessel was allegedly involved in an incident that has given rise to claims and potential claims including the claims of Brian Moore (hereinafter the "Incident").

6. Any and all injuries and damages allegedly resulting from the Incident were not caused by or attributable to any fault, design, neglect or want of due care on the part of Petitioner, or anyone for whom Petitioner may be responsible, and any and all such alleged damage was occasioned and occurred without Petitioner's privity or knowledge.

7. Prior to and on October 30, 2003, Petitioner used due diligence to make the Vessel seaworthy for the service for which it was engaged.

8. Based upon the information presently available, as a result of the Incident, claims have been made which could potentially exceed Petitioner's interest in the Vessel, said value of possible claims being specifically denied by Petitioner.

9. There was no freight pending which was due and payable to Petitioner at the time of the Incident.

10. Upon information and belief, there were and are no unsatisfied liens or claims of liens pending against the Vessel arising from the Incident or the voyage described herein.

11. Petitioner's interest in the Vessel after the Incident was \$1,200,000.00. (See Affidavit of Value which is attached hereto and incorporated herein by reference).

12. Upon information and belief, there are two other suits pending against Petitioner (Delaware Superior Court, New Castle County (No. 06C-10-305 MJB) and Pennsylvania Court of Common Pleas, Philadelphia County (No. 061002073)) with no suits pending against the Vessel and no claims or demands prior or paramount to those which may arise by reason of the Incident.

13. Petitioner denies any and all liability for any loss, damage or injury which may be claimed by any person or entity arising out of the Incident, and therefore demands exoneration from liability.

14. In addition, and in the alternative, Petitioner claims the benefit of limitation of liability as provided for in the Revised Statutes of the United States and the various amendments and supplements thereto and, more particularly, the United States Limitation of Shipowners' Liability Act, 46 U.S.C. §§ app. 183-189.

15. Petitioner is ready, able and willing and hereby offers to provide security for the value of Petitioner's interest in the Vessel following the Incident, interest at the rate of 6% per annum, and costs, by depositing with the Court a bond in approved form.

16. All and singular, the premises are true and within the admiralty and maritime jurisdiction of the United States and this Honorable Court.

WHEREFORE, Petitioner prays:

A. That if deemed necessary by the Court or at the reasonable request of any claimant, the Court cause due appraisal to be made of the value of Petitioner's interest in the Vessel.

B. That the Court order Petitioner to file an Ad Interim Stipulation with surety pending any demand for appraisal of Petitioner's interest in the Vessel.

C. That the Court enter an Order directing the issuance of a monition to all persons claiming alleged damages for any and all losses, damage, injury or destruction done, occasioned or incurred by, or resulting from, the Incident or occurring during the voyage upon which the Vessel was then engaged, citing them to appear before this Honorable Court and make due proof of their claims, and also to appear and answer the allegations of this Complaint according to the laws of this Court on or before a certain time to be fixed by the monition, or be thereafter barred from making any such claims against Petitioner, its agents, representatives, crew members or any person on whose behalf Petitioner may be liable or against the Vessel.

D. That the Court enter an Order directing that upon the giving of an Ad Interim Stipulation, an injunction shall issue restraining the further prosecution of any and all suits, actions and proceedings which may have already begun to recover for alleged damages sustained as a result of the Incident and further enjoining the commencement or prosecution thereafter of any suit, action or legal proceeding of any nature against Petitioner, its agents, representatives or any other person in respect to any claim or claims arising out of the Incident.

E. That the Court in this proceeding adjudge:

(i) that Petitioner is not liable to any extent for any loss, damage or injury for any claim whatsoever in any way arising out of or in consequence of the Incident and, therefore, is entitled to exoneration, or

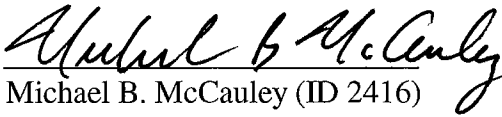
(ii) if Petitioner shall be adjudged liable and the claims are affirmatively proven, then such liability for all claims shall be limited to the amount of the value of the Petitioner's interest in the Vessel after the Incident and that Petitioner be discharged therefrom upon the surrender of his interest in the Vessel and that the limitation fund be divided *pro rata* among any

claimants as may duly prove their claims, saving to all any priorities to which they may be legally entitled, and that a decree may be entered discharging Petitioner from all further liability.

F. That Petitioner may have such other and further relief as this Court may deem just and proper in the circumstances.

Respectfully submitted,

PALMER BIEZUP & HENDERSON LLP

By: 
Michael B. McCauley (ID 2416)
1223 Foulk Road
Wilmington, DE 19803
(302) 594-0895
(302) 478-7625 (fax)
mccauley@pbh.com

Dated: April 5, 2007

VERIFICATION

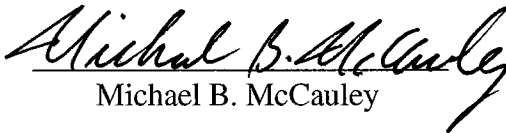
I, Michael B. McCauley, hereby declare as follows:

I am a partner in the law firm of Palmer Biezup & Henderson LLP, attorneys for Petitioner Delaware Bay Launch Service, Inc.;

I have read the foregoing Complaint, and all the allegations of fact contained therein are true and correct to the best of my knowledge, information and belief, which is based upon information obtained during the course of counsel's investigation;

I certify under penalty of perjury that the foregoing is true and correct.

Executed on April 5, 2007.


Michael B. McCauley

JS 44 (Rev. 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

WILMINGTON TUG, INC., AS OWNER OF "LINDSEY,"
A 70-FOOT 1989 TOWING VESSEL

(b) County of Residence of First Listed Plaintiff New Castle, DE
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Palmer Biezup & Henderson LLP
1223 Foulk Road, Wilmington, DE 19803 (302) 594-0895

DEFENDANTS

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input checked="" type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
46 U.S.C. app. § 185

Brief description of cause:
Vessel owner's petition for exoneration from or limitation of liability

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 **DEMAND \$**

CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

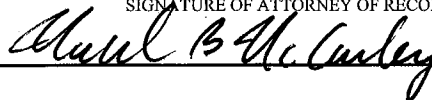
JUDGE _____

DOCKET NUMBER _____

DATE

04/05/2007

SIGNATURE OF ATTORNEY OF RECORD



FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____